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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-243

PANHANDLE EASTERN PIPE LINE COMPANY,
and
NATIONAL HELIUM CORPORATION,
Petitioners,
VERSUS
MOBIL OIL CORPORATION, ET AL.,
and
RALPH GROUNDS, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION OF MOBIL OIL CORPORATION, ET AL.

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September, 1971

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This brief is submitted by seven of the twelve lessee-producer respondents, which seven are Mobil Oil Corporation, Cities Service Oil Company, Gulf Oil Corporation, Amoco Production Company (formerly Pan American Petroleum Corporation), Diamond Shamrock Corporation, The Superior Oil Corporation, and Mapco Production Company.

The questions presented by this petition are identical with the questions presented by the petition in No. 71-238, *Northern Natural Gas Co., et al.* v. *Mobil Oil Corp., et al., and Ralph Grounds, et al.* Our brief in opposition there is adopted as our brief in opposition here.

The two cases are not different because the petitioners here have, but the petitioners there have not, furnished a tabulation of rate schedules under which they are paying less than the maximum just and reasonable area rate because of contractual limitations. This tabulation is both incomplete and irrelevant. Of the 87 rate schedules tabulated covering 483,000 acres only 19 covering 173,000 acres are in the Hugoton-Panhandle field, which is the nation's largest gas field and its primary source of helium-bearing natural gas. The table does not show the rate schedules in which the contract price is the same or higher than the service rate, or the comparative volumes of helium-bearing natural gas purchased under rate schedules having service rates which are higher, lower, and the same as contract prices.

The petition asserts that this table shows that FPC rate regulation "does not justify judicial intervention with respect to these contracts" (Pet. 15). But intervention has been Congressional, not judicial, and Congress has said in the Natural Gas Act that the service rates shall apply to sales of natural gas, and in § 11 of the Helium Act that they shall not apply to sales of commingled helium. Congress has made no distinction between the rates which are higher, lower, and the same as contract prices, or instances in which there is no contract price, but only a unilaterally filed service rate.

If it is to be implied from this tabulation that lessee-producers may recover the reasonable value of commingled helium when the contract price is the same or higher than the maximum just and reasonable area rate, the only producers who would be denied recovery would be those who are already receiving less than the maximum area rate for natural gas. This would be a rank preference and prejudice which violates § 4(b) of the Natural Gas Act. 52 Stat. 822, as amended, 15 U.S.C. § 717c(b).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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